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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Changes to the Board of)
Directors of the National Exchange)
Carrier Association, Inc.)

CC Docket No. 97-21

Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

PETITION FOR RECONSIDERATION

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September 2, 1997

SUMMARY

The Commission has faced substantial challenges in implementing Universal Service programs faithful to the requirements of the statute. Comcast and Vanguard file this petition for reconsideration seeking modification or clarification of limited aspects of the Commission's July 18, 1997 Order setting rules and procedures for USF administration, collection of information, and contributor assessment and billing mechanisms. If the program is to be successful for all participants -- contributors, beneficiaries and administrators -- the Commission's USF rules and procedures should minimize uncertainty.

One area where the Order creates unnecessary uncertainty is in its adoption of quarterly payment assessment cycles that are completely out of sync with annual business planning cycles. Particularly smaller contributing carriers such as Vanguard and Comcast require more advance warning and certainty the calculation of USF payments so that they may be factored into overall business planning.

As Comcast and Vanguard have previously observed, it is also critical to foster public confidence in the program mechanisms and processes, including provision of sufficient guidance so that contributors and the USF administrator know that all parties are submitting universal service worksheets that make uniform assumptions. A lack of reasonable uniformity will yield inequitable contributions, thus undermining the program and highlighting the need for mechanisms to provide for carrier-specific reimbursement of overpayments.

Finally, the composition of the USAC Board creates a question of possible imbalance when three of the seven Board members who are likely USF contributors are incumbent LECs rather than CMRS providers and new entrants. ILECs have substantially differing concerns about contribution mechanisms than other potential contributors who do not operate in monopoly

or near monopoly markets. Comcast and Vanguard respectfully submit that the FCC consider requiring supra-majority voting in the manner described herein to ensure that the Board's actions are not biased in favor or against particular industry segments.

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PETITION FOR RECONSIDERATION

Pursuant to 47 C.F.R. § 1.429(a), Comcast Cellular Communications, Inc. ("Comcast"), and Vanguard Cellular Systems, Inc. ("Vanguard") by its attorneys, hereby submits its *Petition for Reconsideration* of the Commission's *Order* in the above-captioned proceeding.^{1/} Comcast and Vanguard appreciate that the Commission has been required by statute to adopt comprehensive universal service rules in a very short time frame. However, the Commission must more fully consider the impact of those rules on firms operating in more competitive industries in order to enable diverse providers to serve a broad range of needs under the universal service program. Furthermore, if the universal service program is to be successful for all participants -- contributors, beneficiaries and administrators alike -- the Commission's rules should minimize uncertainty.

^{1/} As a cellular and PCS licensee, Comcast is an interested party in this proceeding within the meaning of 47 C.F.R. § 1.429(a). See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*; *Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration*, CC Docket No. 97-12, CC Docket No. 96-45, FCC 97-253 (released July 18, 1997) (the "*Order*"). The *Order* appeared in the *Federal Register* on August 1, 1997.

In this regard, Comcast and Vanguard do not believe that the *Order* fully takes into account business realities, particularly for smaller companies that typically do not operate in a highly regulated environment. Among other things, the *Order* directs the universal service fund administrator, USAC,^{2/} to calculate quarterly contribution factors that will be used to assess universal service obligations on telecommunications carriers.^{3/} While quarterly revisions in the program contribution factors may make serve regulatory interests, they are exceedingly problematic from a business planning perspective. The Commission must take into account the difficulties imposed by an unpredictable universal service obligation. Businesses need to plan in advance for their expenditures and cannot afford to be provided with short notice of quarterly adjustments of the potential magnitude implied by the Order. In addition, the Commission should consider the likely disparate impact of the proposed obligation on different segments of the telecommunications industry.

Comcast and Vanguard urge the Commission to reconsider the *Order* and adopt billing and collection rules that take account of business planning cycles as outlined below. Comcast and Vanguard also urge the Commission to provide reasonable notice and adequate guidance on the proper methodologies and assumptions CMRS providers should use to complete the Universal Service Worksheet. Finally, Comcast urges the Commission to either reconstitute the Board that oversees the universal service fund administrator so that CMRS and other competitive interests are more adequately represented, or at least to provide for voting structures which will reduce the likelihood that the Board will be biased towards incumbent and rural LECs.

^{2/} USAC, the Universal Service Administrative Company, will be a wholly-owned subsidiary of the National Exchange Carrier Association, the temporary administrator of the universal service fund.

^{3/} *Order* at ¶ 42.

I. THE BUSINESS DISRUPTIONS CAUSED BY NEW REGULATORY REQUIREMENTS MUST BE CONSIDERED, EVEN WHEN THOSE REQUIREMENTS MUST BE ESTABLISHED QUICKLY

Comcast and Vanguard certainly acknowledge that the Commission faces substantial challenges in developing universal service requirements, including the need to oversee participation by a variety of industry segments with markedly different characteristics. As part of its process, the Commission must determine and consider the impact of new or revised rules on firms operating in the more competitive industries it oversees as well as the impact on the incumbent carriers it regulates more stringently.

The universal service assessment process adopted in the *Order* will lead to unnecessary market consequences. For example, the *Order* directs USAC to calculate quarterly universal service fund contribution factors that will be used to assess the universal service fund's mandatory contributions.^{4/} To derive these figures USAC and other responsible entities for schools, libraries and rural health care will submit projected universal service demand and administrative expense information to the Commission at least 60 days before the start of each calendar quarter. The Commission will release these aggregate projections in a Public Notice, and will then approve or change those projections within 14 days, a period which offers very little time for objection, comment or other participation by any interested party. After the projections are approved, USAC will use them to calculate the quarterly contribution factors and to process individual notices of assessment to the universal service fund's mandatory

^{4/} *Order* at ¶ 45.

contributors.^{5/} This process will result in contribution factors (which are in effect, rates of taxation) being publicly released on as little as 45 days notice.

Business plans typically are set a year in advance, as Comcast recently noted to the Commission.^{6/} Under the universal service fund billing and collection procedures and rules set forth in the *Order*, however, businesses will have no ability to budget their contributions for the next fiscal year, and will not even be able to predict what their universal service obligation from quarter to quarter. Because projected demand for universal service funding could change quickly, the universal service fund contribution factor could conceivably increase by considerable magnitudes one quarter to the next without any notice. Under the existing process carriers will have no way of knowing what their universal service obligation will be in the coming quarter, let alone for the following year, thus greatly limiting any meaningful efforts to plan and project for their use of revenues.^{7/}

Further, because the Commission has not yet directed that universal service obligations be passed through to consumers in the form of a competitively-neutral surcharge, a varying universal service obligation will have a disparate effect on different types of telecommunications carriers. Incumbent LECs and their affiliates, for example, will be far better situated to absorb or pass on to others these changing universal service costs than will their smaller competitors that

^{5/} *Order* at ¶¶ 46-49.

^{6/} See *Petition for Reconsideration of Comcast Cellular Communications, Inc., Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96-186, (filed August 11, 1997) at 2-3.

^{7/} Companies will also have to put a large reserve contingency on their books to cover their unknown universal service fund requirements, an action which has additional costs, particularly for publicly traded companies.

operate in far more competitive markets.^{8/} Moreover, all carriers will be required to revise their end user charges quarterly to keep pace.

The Commission should give businesses regulatory certainty and parity, especially because quarterly revision of all components of the universal service contribution factor is neither necessary nor required. In the *Universal Service Order* the Commission determined that quarterly revision of the contribution factor based on school and library and health care demand for funds was appropriate because of the lack of historical data to estimate accurately demand for the programs.^{9/} No similar finding was made as to the high-cost and low-income components of the contribution factor, or as to the need to constantly refresh data as to the fund's administrative costs. In fact, there is no reason that high-cost and low-income needs and fund administrative costs cannot be projected on an annual basis, especially since those needs and costs *can* and *will* be based on historical data, at least for the near future.^{10/} Annual projections for the high-cost/low-income and administrative costs portions of the universal service fund would allow calculation of an annual contribution factor to cover those items, and give businesses at least

^{8/} See *Reply to Oppositions to Petitions to Deny of Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (filed August 28, 1997) at 9-12. Because carriers other than ILECs may be forced to pass on universal service fees to end-users, while incumbent ILECs can absorb the fees or pass them on to IXC's, one result of the *Order* and the Commission's general universal service regulatory regime will be to disadvantage wireless carriers and other new entrants at the very time that completion is beginning to unfold. Absent a mandatory pass-through of universal service fees to end users, the current universal service regulatory regime will create anticompetitive market dislocation.

^{9/} *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 97-157 (released May 8, 1997) at ¶¶ 532, 715.

^{10/} Similarly, once the high cost fund is funded by application of a forward-looking cost model, these costs and related contribution factors should not vary substantially over time.

some benchmark to use for planning purposes. Indeed, after 1998, there is no reason why an estimate of school and library and health care demand cannot also be made on an annual basis.^{11/}

Establishment of annual projections and the annual calculation of corresponding contribution factors provides an additional benefit: a procedural check by interested parties on how the funds are being used. All parties, carriers and end users alike, have an interest in knowing how the assessments will be used. An open and public review of universal service projections can help keep universal service support funds from ballooning beyond the limited purposes permitted by the Act. No one, however, will be able to adequately review projections within a 14-day window on a quarterly basis.^{12/} Annual review will allow the industry to actually examine and question the projections, and will provide sufficient time to work through the administrative process should the projections be challenged. If these challenges cannot be resolved before the new year's contribution factor takes effect, the factor can be put into place and then lowered at some later point if the challenges are successful, with the excess funds returned to the carriers with interest. At the very least the Commission must modify the *Order* on reconsideration to provide a reimbursement mechanism for carriers that are assessed in error.^{13/}

^{11/} Yet the concern with the limits of the health care and schools/libraries provision is just as acute. While the highest overall cost program will be theoretically limited in size, it is not clear what limitations exist on future growth of the health care and schools/libraries program. If, however, funding is capped, an annual percentage can be established with a refund or credit for unused sums.

^{12/} See, e.g., *Order* at ¶ 48.

^{13/} It is inevitable, particularly in the early stages to the program, that some carriers will be assessed excessive contributions relative to other carriers, yet the *Order* makes no provision for restitution. To provide an incentive for proper assessment and prompt resolution of assessment disputes, the Commission must provide for prompt repayment, with interest, of carrier overpayments. The Commission has already penalties and sanctions for underpayments,
(continued...)

Comcast and Vanguard urge the Commission to direct that the universal service fund contribution factors be set annually and that the factors be calculated and released at the end of the third quarter of the prior year so that they can be used and relied upon for business planning purposes. If quarterly adjustments are required, they should be limited to the health care and schools/library programs, and then only maintained for calendar year 1998; after that time annual demand forecasts can and should be developed for all elements of the universal service fund contribution factor. Regardless of how the Commission handles the quarterly payment issue on reconsideration, it should recognize the mandatory contribution requirement functions like a tax, and should be explicitly collected by recovery from end-users so as to avoid skewing markets to the advantage of certain classes of telecommunications carriers.^{14/}

Review by industry competitors will also be enhanced if the Commission recomposes the USAC Board to more fairly reflect the interests of CMRS and other non-incumbent telecommunications providers. As it stands, telecommunications representation on the USAC Board is heavily weighted towards rural and incumbent LECs.^{15/} No compelling reason is provided for the enhanced power given to ILECs in the *Order*; it is not enough to say that ILECs

^{13/} (...continued)

it must do no less to safeguard the program and its contributors from over payments (and fund administrator liability for over payments). *See, e.g., Public Notice, FCC Announces Non-Substantive Changes to Universal Service Worksheet Instructions Released on August 4, 1997, CC Docket 97-21, 96-45, DA Number 97-1671A (released August 11, 1997) at 1.*

^{14/} *See Joint Petition for Reconsideration of Comcast Cellular Communications, Inc. and Vanguard Cellular Systems, Inc., Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (filed July 17, 1997) at 20-21.*

^{15/} *See Order at ¶¶ 33, 35 (3 of 7 seats on the Board reserved for parties contributing to the fund are retained for ILECs).*

need three board positions "because of the large non-ILEC majority among the participants."^{16/} In addition, 8 seats are made available to beneficiaries of the fund. As a result, incumbent LECs and others who are clear beneficiaries of the programs and who have traditional interests in increasing the size and scope of the fund have 11 of the 17 seats. Those who may desire to participate in the fund in non-traditional ways, or who because of size or the inability to secure guaranteed rates of return from federal and state regulators are nowhere near so well represented. Representation should be fairly balanced to more adequately reflect new and more competitive forces, and to ensure that no interests so predominate as to skew the proper development of the programs. In the alternative, super-majority voting provisions should be adopted so that no single interest group can assert excessive influence over the Board, particularly in reviewing eligibility or establishing program requirements and contribution factors. This could be accomplished by requiring 45% of the Board (all members) to vote affirmatively or by establishing voting classes each of whom must approve any proposal. A quorum should also be required of 80% of all Board members.

II. THE COMMISSION MUST APPRECIATE THE COMPETITIVE IMPLICATIONS OF ITS REGULATIONS

Another troubling aspect of the *Order* is the timing of its release. The *Order* was released in mid-July establishing rules and procedures (with penalties and sanctions) to be complied with by September 1, the date Universal Service Worksheets were to be filed. The critical details of how universal service fund contributions were to be assessed, collected and

^{16/} *Order* at ¶ 35.

billed, were established and released without public notice and comment. Similarly, the *Order* attached as an Appendix a form of the Universal Service Worksheet.^{17/}

Further, once the scope of the Universal Service Worksheet information became plain, it became obvious that the form was not well adapted to CMRS providers. On August 21, CTIA filed a letter on behalf of its members raising a variety of critical threshold issues. Rather than reargue the need for clarification of these issues, the parties have attached as Exhibit 1 the CTIA clarification letter. This letter contains over nine pages of questions and potentially acceptable alternative approaches formulated by CTIA's members.

Comcast and Vanguard appreciate that the Commission and the USAC have a difficult task in setting up appropriate processes that ensure an adequate flow of universal service funds beginning January 1, 1998. Nonetheless the telecommunications industry should have been afforded greater opportunity to comment on important aspects of the process. In this instance, parties were not given sufficient notice to collect and analyze revenue information or plan for the filing date, a serious issue for entities such as CMRS providers (and many other carriers that are not ILECs) that do not keep their accounts in a USOA format or separate revenue into licensee subsidiaries. More importantly, CMRS providers, even after making these concerns clear, were only instructed to provide good faith estimates.

The problem with this approach is that USAC will be faced with inconsistent, irreconcilable approaches making even data provided in good faith questionable for establishing the program. It would have been far more useful to the Commission and the USAC, as well as far more efficient and less costly for the industry, to have delayed the submission of worksheet

^{17/} This Worksheet was subsequently approved by OMB and the September 1, 1997 filing date was announced by Public Notice on August 4, 1997.

data until appropriate public clarification had been given. The continuing churn involved in revising worksheets as further guidance is provided is not in the interest of the Commission, or the public.

The Commission must respond to the critical questions of methodology raised by the CTIA letter, and other questions, in order to ensure uniformity in completing the worksheet and ultimate assessments. The problem of inconsistent results is not a minor one. Comcast, for example, has attempted to comply with the requirement to estimate revenues jurisdictionally by instructing its engineers to evaluate the classification of Comcast's trunk groups. Apparently, FCC staff has informally advised at least one other CMRS provider that assumption of a 15% interstate figure would be appropriate.^{18/} Relying upon totally different approaches, even in good faith, will create inequities in payment that will prove extremely difficult for the FCC to iron out, and is unfair to the program and contributions alike. Also, leaving so much to a carrier's discretion could permit too much "gamesmanship" by carriers attempting to balance federal and state obligations.

This course will inevitably require the Commission to set up mechanisms to reimburse carriers back for funds paid in excess, along with interest, while having also to recalculate and assess underpayers for the difference. The Commission should address how this will occur and how interest will be paid to carriers ultimately found to have overpaid their contributions. Finally, the Commission has to make plain that under no circumstances will it seek, either directly or through its administrator, to impose penalties including criminal prosecution, on filing parties unless the Commission can demonstrate that the filer acted in bad faith. Any other

^{18/} See ex parte letter of counsel to Omnipoint Communications, Inc., filed August 21, 197 in this docket.

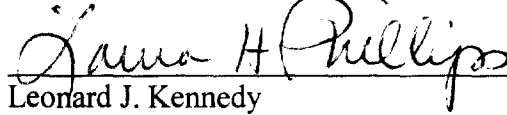
result places the FCC in the position of second-guessing choices filers were forced to make without guidance from the FCC.

III. CONCLUSION

Despite the tight statutory time frames imposed on the Commission, the Commission must make greater effort to take into consideration the business and competitive implications of its rules as well as the timing of their release. The *Order* should be reconsidered in keeping with the proposals herein.

Respectfully submitted,

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September 2, 1997



*Building The
Wireless Future.*

August 21, 1997

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**Re: Wireless Issues Raised by the Universal
Service Worksheet**

Randall S. Coleman
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Regulatory Policy and Law

**Changes to the Board of Directors of the
National Exchange Carrier Association
(CC Docket No. 97-21) and**

**Federal-State Joint Board on
Universal Service (CC Docket No. 96-45)**

Dear Jeanine:

The Cellular Telecommunications Industry Association (CTIA), on behalf of its member companies, seeks clarification of the proper procedures for Commercial Mobile Radio Services (CMRS) providers completing the Commission's Universal Service Worksheet, FCC Form 457. Given the extremely limited amount of time before the worksheet is due, in lieu of requesting a delay of the filing date, CTIA respectfully requests that the Commission promptly respond to this request. CTIA also requests that the Commission specifically afford to CMRS providers the opportunity to adjust their worksheets following the Commission's response, given the Commission's recent statement that failure to comply with the worksheet requirements could result in penalties to the offending entity.¹ Absent clarification of the worksheet requirements, CTIA believes that there is a substantial likelihood CMRS providers will not report their revenues to the Commission consistently and that, despite good faith efforts to comply with the worksheet requirements, that CMRS providers could substantially over-report or under-report their revenues in certain categories identified in the worksheet.²

^{1/} See Public Notice, "FCC Announces Non-substantive Changes to Universal Service Worksheet Instructions Released on August 4, 1997," DA No. 97-1671A (rel. Aug. 11, 1997).

^{2/} CTIA appreciates that the Common Carrier Bureau, in an August 15 Order, clarified that all reporting entities are able to rely on good faith estimates if they do not possess actual data on interstate/intrastate



As the Commission is aware, the structure and organization of CMRS providers differ greatly from that of traditional incumbent local exchange carriers or long distance companies. CMRS licenses are issued for specific market areas that, in many cases, cross state boundaries. Equally important, CMRS providers often consolidate their operations in several license areas based on market demands. As a result, multiple licensee entities often are operated as a single unit, with a single set of books and a single subscriber base. In some cases, CMRS providers have ownership structures that include minority owners, which also affect the accounting for their systems. CMRS providers also operate without regard for state boundaries, a fact recognized by the Commission in its *Local Competition Order*. In many cases, it is not possible for a CMRS provider to know if a call is interstate or intrastate in nature because radio waves, unlike telephone lines, cannot be stopped at the state line.

These characteristics of CMRS have led many of CTIA's member companies to raise questions regarding the proper responses to the Universal Service Worksheet. In an effort to limit the burden on the Commission's resources, CTIA has compiled these questions to provide them to the Commission on a consolidated basis. Since this compilation is based on questions CTIA has received to date, there may be other questions that are not addressed in this letter.

CTIA's questions are as follows:

1. **If a CMRS provider has consolidated the operations and financial records of multiple licensee entities, may it report the revenues for those entities on a consolidated basis?**

As noted above, many CMRS providers have consolidated the operations of several licensee entities for operational and accounting purposes. Unlike incumbent LECs, which historically have been required to maintain separate books for separate legal entities, CMRS providers have not previously been required to do so. In fact, it may be impossible to make this calculation on an individual licensee basis in some instances or may require a provider to change its accounting system solely to complete Form 457. Moreover, if CMRS providers are permitted to report their revenues on a consolidated basis, there will be no effect on the Commission's ability to calculate and assess universal service contributions because the total amounts of revenue reported to the Commission will remain the same. The Commission has permitted consolidated reporting in other contexts, including TRS funding and equal

revenues. While this statement is reassuring, even with it, CTIA's members still have critical, unique issues that must be addressed and resolved prior to completing the worksheet.

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employment opportunity reports. Consolidated reporting could be accomplished by permitting CMRS providers to list all consolidated entities on a single form or separate attached sheet (that lists all included call signs and market areas) and that permits all revenues to be reported on one worksheet.

Based on initial conversations with the Common Carrier Bureau and Wireless Telecommunications Bureau staff, it appears that the Commission appreciates these concerns and may allow CMRS providers to file on a consolidated basis. Public confirmation of this determination is needed immediately, however, to forestall an enormous amount of unproductive labor and permit CMRS providers to move beyond this critical threshold issue to those covered in the remainder of this letter.

2. **If CMRS providers are not permitted to consolidate the operations and financial records of multiple licensee entities that are operated on a consolidated basis, how should the revenues of those operations be apportioned among the licensee entities?**

In the event that the Commission does not permit CMRS licensees to file on a consolidated basis, there are several alternatives for apportionment of revenues among licensee entities that are operated on a consolidated basis and it is not apparent from the instructions how such apportionment should be accomplished. In addition, regardless of the apportionment mechanism adopted by the Commission, it will be difficult for many carriers to derive the necessary information from their records, especially by September 1. For instance, many customers may be billed at addresses that are different from the areas where they use their service, so that use of billing address information may not be sufficient if the Commission were to determine that revenues should be apportioned based on the number of customers assigned to each licensee.³ Apportionment also could be based on minutes of use in each license area, but it is unlikely that many CMRS providers maintain such records. In any event, if apportionment of consolidated results is essential for the Commission, such apportionment will require considerable efforts for CMRS providers, and it will require additional time to prepare worksheets on a non-consolidated basis.

^{3/} Such an apportionment also will not address relative levels of roaming traffic among systems that are operated on a consolidated basis.

3. **What methods for allocating revenues among interstate and intrastate jurisdictions will be deemed reasonable by the Commission?**

As the Commission is aware, members of the CMRS industry have pending petitions for reconsideration seeking to have the Commission treat all CMRS as jurisdictionally interstate.⁴ To the extent that the Commission does not grant those petitions, it will be difficult in many cases to classify individual services and calls as interstate or intrastate in nature. In addition, carriers possess widely differing capabilities of assessing the jurisdiction of their traffic. Most would need to take traffic samples to estimate jurisdiction. CTIA member companies have sought guidance as to the treatment of several types of calls and services that could fall within the interstate classification. Those calls and services are as follows:

- Service provided in markets that cover multiple states, such as the New York MSA and adjacent RSAs, the Los Angeles MTA or the Huntington/Ashland, West Virginia/Kentucky/Ohio MSA. CMRS providers serving these markets often do not track the originating and terminating points of the calls, so they cannot tell whether the call is interstate or intrastate. Unlike LEC service, in which the originating and terminating telephone numbers can be used to determine whether a call crosses state boundaries, a wireless telephone number does not provide the location from which the call originated.
- Service provided from cell sites that cover areas in two or more states. In general, it is impossible to determine the state from which a call originated if the coverage area of the cell includes parts of two or more states. These capabilities are unlikely to evolve in the near future even as enhanced capabilities are added to wireless systems for E-9-1-1.
- Service provided on calls that begin while the customer is in one state and that end while the customer is in another state. CTIA is unaware of any Commission determination as to the jurisdictional nature of such calls.

4. **How should roaming traffic be treated?**

Roaming traffic occurs when a customer is outside his or her home system, and often when the customer is in a different state from the home system. Some CTIA members have concluded that, because roaming requires interaction between the

^{4/} In addition, at least one CMRS service, air-to-ground, previously has been classified as interstate by the Commission. See Allocation of the 849-851/894-896 MHz Bands, 5 FCC Rcd 3861, 3865 (1990).

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customer's home system and the system in which the roaming occurs, it should be treated as interstate in nature. In addition, many CMRS providers have implemented "follow me" types of roaming. These roaming services involve forwarding calls from the customer's home system to the system where the customer is located. CTIA members have asked whether these services should be treated differently from traditional roaming service and some have concluded that it should be treated as interstate service.

Additionally, CTIA members have raised questions regarding the proper attribution of end user roaming revenues to the home system or to the provider that ultimately handles the call. When a CMRS provider bills an end user for roaming usage that occurred outside the customer's home system, for example, all or part of the corresponding end user payments that are collected are ultimately passed to the CMRS carrier that provided the roaming service and are not "revenues" to the collecting carrier. The roaming carrier receives the revenue collected from the end-user from the home carrier, and not directly from the end user. Indeed, because different wireless carriers may use different accounting treatment of roaming revenues, Commission clarification of this issue is needed to prevent roaming revenues from either being unreported or double counted, depending upon whether the home carrier considers them end user revenue and whether the roaming carrier reports them as end user revenues.

There is no uniform approach to addressing this concern. Some CTIA members have suggested that the CMRS carrier who provides the roaming service to the roaming end user customer, and ultimately books the revenue for this service, should report the corresponding revenues on Line 40 on Form 457, even though the carrier does not bill the end user directly. If this approach is adopted then the CMRS provider who bills and collects payment from the end user for the roaming service, and then passes this payment to the CMRS carrier who provided the roaming service, should not report these amounts on Line 40 (but should report any amounts it may collect from end users in excess of the amounts passed on to the roaming carrier).⁵

^{5/} Another approach suggested by a CTIA member would be to report on Line 40 "in-collect" revenues (those billed to the home carrier's customer when he/she is roaming on other markets) as meeting the end user definition. In contrast "out-collect" revenues (those collected from other carriers for calls placed by foreign roamers in the reporting carrier's market) should be reported on Line 28. Additionally, roamer revenues received from other carriers for long distance default treatment (a roamer making a long distance call is defaulted to the wireless carrier's chosen IXC) would fall into the Line 28 reporting category.

5. How should CMRS providers address resale issues?

The Commission's resale policies require CMRS providers to make their services available for resale, but do not require resellers to identify themselves or their end user revenues. In fact, because resellers are entitled to obtain service on the same terms and conditions available to other like customers, in some cases resale customers use the same customer agreements that are used by other large CMRS customers. Many resellers also are not aware of their regulatory obligations and do not comply with the Commission's TRS fund filing requirements, which makes it more difficult for a facilities-based CMRS provider to identify its resale customers reliably. Thus, CMRS providers may have difficulty identifying their resale customers and excluding all resale revenues from the revenues used to calculate contribution obligations. For these reasons, CTIA seeks guidance as to how CMRS providers can identify resale customers in compliance with the Commission's requirements.⁶ Because of the difficulty of being certain that a specific customer is a reseller, it appears that CMRS providers should be permitted to make good faith judgments regarding which customers are resellers for the purpose of completing the worksheet.

In addition, the instructions for the worksheet indicate that entities completing the worksheet can exclude resale revenues from their calculations only as to entities that "can reasonably be expected to contribute to support universal service." Is this statement intended to suggest that the facilities-based provider must undertake an inquiry into the financial qualifications and/or the actual intentions of the reseller to meet the universal service support obligation? CTIA seeks to confirm that a facilities-based provider may exclude revenues from the support calculation if it reasonably concludes that the entity purchasing its services is a reseller that is subject to the support obligation.

6. How should bundled offerings be treated?

CMRS providers often bundle telecommunications services, enhanced services, customer premises equipment and other non-telecommunications services available to their customers. Some CTIA members have sought guidance as to how to report the revenues from such bundles.

In light of the wide variety of bundled offerings that are typically available from a CMRS carrier, there are many possible permutations for backing out the non-

^{6/} One way of doing this is for the Commission to articulate a limited exception to its existing resale policy that permits CMRS carriers to inquire to confirm reseller status for universal service purposes.

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telecommunications features of a bundle. While CTIA recognizes that it is impractical for the FCC to provide rules that apply in every instance, permitting CMRS providers to adopt certain simplifying assumptions will be critical. Failure to adopt simplifying assumptions creates an enormous amount of unnecessary additional work for each carrier that must examine the specific features of each bundled rate plan and determine in each case the appropriate distribution for the phone, the features and the telecommunications services. One simplifying assumption would be to allow CMRS carriers to back out non-telecommunications features and equipment uniformly based on their stand-alone fair market value.

7. Hows should CMRS carriers account for fraud-related uncollectibles?

As the Commission is aware, CMRS carriers experience fraud-related uncollectible debt because of the nature of CMRS calling and the availability of cloning devices. In many cases the CMRS carrier becomes aware of alleged fraudulent calling when its customer receives a bill and questions apparently unauthorized calls. Typically the amount in question is held while the carrier, often together with a roaming partner, investigates the matter. To cover this financial contingency, most CMRS carriers place a fraud reserve on their books. This reserve is updated approximately every six months to reflect current experience with fraud uncollectibles. While the Worksheet requires that uncollectibles be factored into revenue amounts, it is not at all obvious that CMRS fraud-related uncollectibles represented in the fraud reserve should be included in a more general uncollectible category. To do so would ignore the unique fraud uncollectible issues associated with CMRS carriers and cause anomalously high uncollectibles for CMRS carriers.⁷

8. How should CMRS carriers account for universal service fees?

To the extent a CMRS carrier determines that it must pass onto end users universal service expenses in the form of additional fees, several member companies request clarification of how these fees are properly accounted for -- as telecommunications revenues or as non-telecommunications revenues? It would appear that universal

^{7/} Fraud is a multi-million dollar problem for the wireless industry each year. It is unreasonable to penalize CMRS providers by mandating that a universal service fee be paid on total gross end user revenues when a significant portion of that revenue is never collected by the CMRS providers. CTIA members suggest that Instructions for Lines 28, 39 and 49 on FCC Form 457 be revised to permit allowances for uncollectibles, including fraud. CTIA suggests that such allowance should be based on current period booked uncollectibles, even though those amounts correspond to a different reporting period. There may be a timing difference, but this is preferable to further complicating the reporting process with additional steps to estimate and then true-up the amount for uncollectibles.

service pass-throughs are not charges for a telecommunications service, and therefore not properly classified as a telecommunications service. CTIA, however, requests confirmation of this assumption.

9. Will reporting entities be subject to penalties for reporting data that are calculated in good faith but are inconsistent with later-adopted Commission determinations regarding reporting requirements?

The Commission's August 11 public notice emphasized that reporting entities that do not provide accurate responses on the worksheet will be subject to penalties, including criminal sanctions in some cases. As the discussion above demonstrates, there is substantial uncertainty among CMRS providers about how to complete large parts of the worksheet and, absent specific Commission guidance, CTIA members and other CMRS providers will be forced to make good faith judgments regarding these issues. CTIA seeks clarification of what steps CMRS providers (and others) can take to ensure that they are not subject to penalties for reporting "incorrect" data if the Commission later determines that such good faith judgments are not consistent with the Commission's expectations of how the worksheet should be completed. CTIA appreciates that the Common Carrier Bureau on August 15 released an order clarifying that good faith estimates will be sufficient for those carriers unable to determine interstate and intrastate jurisdictional splits. CTIA seeks to confirm what the order appears to state, that is that all worksheet data furnished in good faith will not subject the service provider to non-compliance penalties.

The Commission's responses to these questions will have a substantial impact on how CMRS providers will complete the worksheet. Indeed, many CTIA members have indicated that they may be unable to complete the worksheet absent the clarifications requested in this letter. Even if CMRS providers can complete the worksheets without answers to these questions, it is likely that their responses will be inconsistent with each other and may not comport with the Commission's expectations regarding total reportable revenues and the allocation of revenues to the interstate jurisdiction. These concerns are particularly acute because, unlike incumbent LECs, CMRS providers generally have not been subject to accounting requirements such as the Uniform System of Accounts and have not been required to provide data to any regulator in forms that are similar to what is required by the worksheet. Thus, it is critical to CTIA's members and other CMRS providers that the Commission address these issues promptly.

Regardless of when the Commission responds to this request, CMRS providers also should be afforded additional time to prepare and submit amended worksheets. The

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Commission's responses to the questions outlined above are likely to require new calculations and additional analysis before CMRS providers are able to complete and submit their worksheets. Given the complexity of most providers' accounting systems, extracting the necessary information also is likely to be a time-consuming process. Without additional time, it will be impossible for CMRS providers to compile accurate information necessary to that task. Indeed, unlike incumbent LECs, CMRS providers are likely to need the time to create the information required for the worksheet from scratch, rather than simply filling in figures from existing accounting records. This process will be especially difficult and time consuming in this case because CMRS providers never before have been required to provide information at this level of detail. Accordingly, the Commission should permit carriers to amend or modify their Form 457's to insure accurate responses.

Please inform me if any questions should arise in connection with this letter.

Respectfully submitted,



Randall S. Coleman

cc: Chairman Reed Hundt
Commissioner James Quello
Commissioner Rachelle Chong
Commissioner Susan Ness
Regina Keeney
Daniel Phythyon
Richard Metzger
Thomas Boasberg
Paul Gallant
Kathleen Franco
James Casserly
Lisa Gelb
Karen Gulick
David Krech
Diane Law
Tejal Mehta

CERTIFICATE OF SERVICE

I, Cynthia S. Shaw, do hereby state that I caused the foregoing "**PETITION FOR RECONSIDERATION**" to be sent by hand-delivery, this 2nd day of September, 1997 to the following:


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